

**COMMISSION ON COMMON OWNERSHIP COMMUNITIES
MONTGOMERY COUNTY, MARYLAND**

**Miles and Peggy Chidel
1810 Dellabrook Farm Lane
Brookeville, Maryland 20833**

Complainant

vs.

**Case No. 76-09
October 6, 2010**

**Dellabrook Homeowners Association
c/o Ursula Burgess, Esq.
Rees, Broome
8133 Leesburg Pike, 9th Floor
Vienna, Virginia 22181**

Respondent

MEMORANDUM DECISION AND ORDER

Miles and Peggy Chidel (“Complainants”) filed a dispute with the Commission on Common Ownership Communities on December 9, 2009, alleging that Dellabrook Homeowners Association (“Respondent” or “Association”), arbitrarily, unreasonably, and in violation of its governing documents, imposed a special assessment of \$880.00 per Lot to pay for the legal fees incurred by the Respondent in litigation involving the Respondent and a homeowner concerning enforcement of Respondent’s architectural rules. Complainant also alleged that the Respondent failed to give proper notice of an annual election in that the Respondent gave only nine (9) days notice of the election when the Respondent’s Bylaws required at least fifteen (15) days notice. Complainant also alleges that the Respondent Board intentionally failed to disclose the resignation of one of its members until after the election, so only one seat was up for election instead of two. Complainant was an unsuccessful candidate for the one known seat and alleges he might have been elected to the Board if two seats were up for election. Commission Exhibit 1, the case file, was entered into evidence without objection from either Complainants or Respondent.

After Complainant Miles Chidel presented Complainants’ case to the Panel, he decided abruptly to leave the hearing during Respondent’s presentation of its case. Mr. Chidel stated to the Panel, among other things, that he was not interested in hearing the Respondent’s case presentation (which he categorized as “lies”). In response to the Panel Chair explaining that Complainants had the right to cross-examine Respondent’s

witnesses, Mr. Chidel stated that he did not want to cross-examine the Respondent's witnesses. Complainants did not enter any Exhibits into evidence. After the Complainants left, the Panel allowed Respondent to finish presenting its case and entered Respondent's Exhibits 1 through 10 into evidence.

Findings of Fact

Complainants Miles and Peggy Chidel are the owners of a Lot situate within Respondent, a homeowners association within the meaning of the Maryland Homeowners Association Act and Chapter 10B of the Montgomery County Code.

Respondent incurred substantial legal fees in or about year 2009 defending against a lawsuit filed against it by Lot owners John and Stephanie Hesse concerning an architectural matter.

Respondent's counsel in the lawsuit unsuccessfully sought to have the Respondent's insurance carrier, State Farm, defend Respondent in the litigation. If State Farm had accepted defense of the case, then State Farm instead of Respondent would have paid Respondent's legal fees.

Respondent did successfully negotiate with its counsel multiple reductions of the attorney's fees to be paid to counsel for the defense of the lawsuit.

Due to the substantial legal bills incurred in defending the litigation initiated John and Stephanie Hesse, the Respondent's Board of Directors at a meeting held on November 19, 2009, approved a special assessment of \$880.00 per Lot to pay the legal fees and costs incurred by Respondent as a result of the Hesse litigation.

Complainants were unhappy about having to pay the special assessment for the legal bills.

The Respondent's governing documents permit Respondent to levy special assessments.

Respondent has a five (5) person Board of Directors.

At the July 2007 Annual Meeting, Jack Hangen, Charlene Sohrab, and Dan Goldberg were re-elected to new three (3) year terms on the Respondent's Board. Kristen Milne was appointed by the Board to fill the remainder of departing Board member Chris Durigg's slot (Milne's term to end of July 16, 2008). Donna Foo was also on the Board – her term was to end in July 2009.

At the July 2009 Annual Meeting, only one seat for a director was open for election. Complainant Miles Chidel ran for that vacant seat. Homeowner Chris Durigg also ran for that vacant seat. Chris Durigg was elected by the members to fill that vacant seat.

Complainants presented no evidence in support of the allegation in their Complaint that Respondent intentionally failed to disclose the resignation of one of its members until after the election, so only one seat was up for election instead of two.

Complainants presented no evidence that two Board seats should have been up for election at the July 2009 Annual Meeting.

Respondent gave less than fifteen (15) days notice (as required by Respondent's Bylaws) of the July 2009 Annual Meeting to the membership to the Complainants and the other homeowners.

Complainant Miles Chidel attended the July 2009 Annual Meeting in person.

Conclusions of Law

The Respondent's Declaration, Article VI, Covenant for Maintenance Assessments, Section 6.03, Special Assessments, provides as follows: "In addition to the general assessments authorized by this Article, the Association may levy, in any assessment year, a special maintenance assessment or assessments, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, extraordinary repair or replacement of a described capital improvement located upon, or forming part of, the Common Areas and Facilities, including the necessary fixtures and personal property related thereto, **or for such other purpose as the Board of Directors may consider appropriate.** (Emphasis added).

As a general rule, with only limited exceptions, courts will not interfere in the internal affairs of a corporation. Mountain Manor Realty, Inc. v. Buccheri, 55 Md.App. 185 (1983). The business judgment rule precludes judicial review of a legitimate business decision of an organization, absent fraud or bad faith. Black v. Fox Hills North Community Association, Inc., 90 Md. App. 75 (1992).

The Panel finds that Respondent Board's decision to levy a special assessment upon the Lot Owners to pay the attorney's fees and costs incurred by the Association in defending litigation brought against the Association by a homeowner was, as a matter of law, a legitimate business decision covered by the business judgment rule.

The Respondent's Bylaws, Article III, Section 3, Notice of Meetings, provides that "written notice of each meeting of the members shall be given...by mailing a copy of such notice, postage prepaid, at least fifteen (15) days (but not more than sixty (60)) days before such meeting to each member entitled to vote thereat...Such notice shall specify the place, day, and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting".

The Maryland Code, Corporations and Association, Title 2., Section 2-504 (e) (2) provides as follows: “*Waiver of notice.* – Whenever this article or the charter or bylaws of a corporation require notice of a meeting of the stockholders, each person who is entitled to notice waives notice if the person: Is present at the meeting in person or by proxy.”

The Maryland Code, Corporations and Associations, Title 5, Section 5-201 provides generally that the provisions of the Maryland General Corporation Law apply to nonstock corporations.

The Panel finds that while Respondent failed to provide at least fifteen (15) days notice of the July 2009 Annual Meeting to Complainants as required by the Bylaws, Complainant Miles Chidel admitted that he was present in person at the July 2009 Annual Meeting. Thus, pursuant to Sections 2-504(e) (2) and 5-201 of the Maryland Code, Complainants as a matter of law waived notice of the meeting.

Order

Based on the foregoing Findings of Fact and Conclusions of Law, it is this 6th day of October, 2010, ORDERED as follows:

1. That the Complainants’ request(s) for relief set forth in the Complaints are **DENIED IN THEIR ENTIRETY.**

Any party aggrieved by the action of the Commission may file an administrative appeal to the Circuit Court for Montgomery County, Maryland within thirty days after this Order, pursuant to the Maryland Rules of Procedure governing administrative appeals.

Panel Members DUBIN and FARRAR concur in this decision.

Corinne G. Rosen, Esq., Panel Chair